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November 2, 2007

**Via ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, D.C. 20554

RE: Written *Ex Parte* Submission by Southern Communications Services, Inc.  
FCC Docket No. 96-45, FCC 97-419, DA 05-269, DA 05-143

Dear Ms. Dortch:

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless"), through its attorneys, respectfully submits this *ex parte* letter in the above-referenced dockets.<sup>1</sup> In reply comments to the Joint Board filed in the above-referenced docket on July 2, 2007 (the "Reply Comments"), SouthernLINC Wireless proposed triggers to phase-out high-cost support consistent with the goals and requirements of the Telecommunications Act of 1996 (the "Act"). This letter addresses questions about the phase-out proposal, and proposes the additional limit that each eligible telecommunications carrier ("ETC") can receive support for a maximum of two lines per billing address. SouthernLINC Wireless respectfully submits that this proposal would be the most effective way of achieving the Act's goal of providing "explicit and sufficient"<sup>2</sup> support to consumers in rural, high-cost areas while controlling fund growth.

As SouthernLINC Wireless explained in its Reply Comments, the best way to achieve the goals of the Act while efficiently managing growth of the high-cost fund is to direct support solely to geographic areas where it is truly needed, and to phase out support once it is no longer

<sup>1</sup> *In the Matter of High-Cost Universal Service Support; Federal State Joint Board on Universal Service*, Notice of Proposed Rulemaking, FCC 07-88 (rel. May 14, 2007) ("USF Cap NPRM").

<sup>2</sup> 47 U.S.C. § 254(e).

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needed.<sup>3</sup> Put simply, support should be available only where it is absolutely necessary, and then only for as long as it is absolutely necessary to achieve the goals of the Act. The phase-out proposal of SouthernLINC Wireless is intended to ensure that support is available only for as long as it is absolutely necessary to achieve the goals of the Act, and to permit the Commission and the states to act on pending ETC petitions without concern about uncontrollable growth of the high-cost fund.

Any proposed reform must comply with section 254 of the Act, which requires the Commission to base its policies for the preservation and advancement of universal service on several principles, including the principle that:

[Consumers living] in rural, insular, and high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.<sup>4</sup>

In urban areas, consumers have a wide range of telecommunications choices, both among service types and service providers. Therefore, under section 254, proposed reforms must be designed to ensure that consumers living in rural, insular and high-cost areas have a “reasonably comparable” range of telecommunications choices, both among service types and service providers, and the rates for those services must be reasonably comparable to the rates available in urban areas.

Section 254(b)(5) also requires that universal service funding be “specific, predictable and sufficient” to “preserve and advance universal service.” Section 254(e) further mandates that a carrier which receives support “shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Any such support should be explicit and sufficient to achieve the purposes of this section.”<sup>5</sup> Accordingly, the Act prohibits the implementation of any support distribution mechanism that would provide only token or partial support to competitive ETCs. Rather, support must be “specific, predictable and sufficient” to achieve the goals of section 254 – facilitating competitive entry into rural, insular

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<sup>3</sup> SouthernLINC Wireless Reply Comments, WC Docket No. 05-337 (filed July 2, 2007).

<sup>4</sup> 47 U.S.C. § 254(b)(3).

<sup>5</sup> 47 U.S.C. § 254(e).

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and high-cost areas so that consumers in these areas can enjoy choices that are “reasonably comparable” to the choices available to urban consumers.<sup>6</sup>

The Commission has reported that 98 percent of the total U.S. population lives in counties with at least three different mobile operators.<sup>7</sup> As such, consumers in rural, insular and high-cost areas should have access to the services of at least three different mobile operators at rates that are reasonably comparable to the rates available in urban areas. Moreover, as Congress has found, consumers in rural, insular and high-cost areas should have, at a minimum, access to both a primary line and secondary line from the service provider of their choice.<sup>8</sup>

SouthernLINC Wireless therefore proposes that the universal service mechanism should provide *full support* in each geographic support area until the area is served by the ILEC and three competitive ETCs. Entry of a fourth ETC would trigger the phasing-out of support to all ETCs serving that geographic area, because the presence of the ILEC and three competitive ETCs would demonstrate that support is no longer necessary for that area. Moreover, each ETC would be limited to receiving support for only two lines to each billing address.

The proposal is based upon the recognition that support may no longer be necessary to facilitate the goals of the universal service provisions of the Act in areas served by an ILEC and three or more competitors. However, the immediate withdrawal of support could, under certain circumstances, create market shocks that lead to undesirable consequences. Therefore, SouthernLINC Wireless proposes that universal service support should be phased out over a period of time:

- Tier I CMRS providers would no longer be eligible for support two years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area.

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<sup>6</sup> See, e.g., *Federal-State Joint Board on Universal Service; Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, 16 FCC Rcd 11244, ¶ 11 (2001) (adopting the goal of “facilitat[ing] competitive entry into high-cost areas, [and] bringing the benefits of competition to consumers in rural areas”).

<sup>7</sup> *Id.* at 50.

<sup>8</sup> See P.L. 109-289, as amended by P.L. 110-5 (2007) and P.L. 110-92 (2007) (expiring on Nov. 16, 2007). See also S. Rept. 110-129, Sec. 502 (proposing an extension of the prohibition through fiscal 2008).

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- Tier II CMRS providers would no longer be eligible for support four years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area.
- Finally, six years after the end of the quarter in which the fourth competitive ETC begins serving the entire geographic area, the ILEC and all other competitive ETCs would no longer be eligible for support from the universal service fund.

In addition to the scheduled phasing-out of support, the Commission should create a safety valve procedure so support would continue to be available to any ILEC or competitive ETCs which can demonstrate that continued support is necessary to further the goals of the universal service provisions of the Act and prevent harm to consumers in that area.<sup>9</sup>

The SouthernLINC Wireless proposal offers several advantages. First, the proposal encourages entry to rural, insular and high-cost areas, but ends support once competition has taken root and support is no longer necessary to further the Act's goals.<sup>10</sup> Specifically, the phase-out proposal would create incentives for ETCs to begin serving rural, insular and high-cost areas as soon as possible, whether to receive support for themselves or to trigger phase-out of support to their competitors, which is the best way to achieve the Act's goals as efficiently as possible. Indeed, the phase-out proposal could be implemented immediately regardless of whether the Commission changes other aspects of the high-cost funding methodology.

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<sup>9</sup> Specifically, if the phasing out of support in an area would harm consumers in that area by causing prices to rise or service providers to cease service, support should be extended despite the presence of the ILEC and three competitive ETCs. Subsequent ETCs entering the area would not be eligible to receive support under the safety valve absent receiving a waiver of the rules from the Commission. However, the entry of a fourth competitive ETC to the area would again trigger the phasing out of support unless the ETCs currently receiving support could again demonstrate that consumers in the area would be harmed unless support continued.

<sup>10</sup> See, e.g., *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶7 (1996) ("By reforming the collection and distribution of universal service funds, the states and the Commission will also ensure that the goals of affordable service and access to advanced services are met by means that enhance, rather than distort, competition."). Specifically, the proposal ensures that support is used to "produce a robustly competitive market with a diversity of efficient providers serving a variety of consumer needs." *Implementation of Sections 3(n) and 332 of the Communications Act Regulatory Treatment of Mobile Services*, 9 FCC Rcd 7123, ¶ 3 (rel. Nov. 18, 1994).

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Second, the proposal would permit the Commission and the states to designate all eligible ETCs as soon as possible without fear of uncontrollable growth of the high-cost fund. Specifically, since support would be limited to the ILEC and three competitive ETCs, and each of these carriers would be eligible to receive support for a maximum of two lines per billing address, the Commission and USAC could calculate the maximum potential size of the fund without regard to the total number of carriers with ETC designation. Moreover, the fund would never reach the maximum potential size because (1) some region would be served by the ILEC and less than three competitive ETCs, (2) support would be phased-out in some regions, and (3) support in regions served by the ILEC and three competitive ETCs would likely be phased-out soon.

Third, the proposal complies with both the letter and the spirit of the Act. Congress recognized and intended for competitive entry of telecommunications providers and for competitive prices of their services as described above to supplant the need for high-cost support. In fact, the House Commerce Committee noted of high-cost support in its Report on the Act that, “over time, the [Congressional Budget Office] expects that the operating costs of telephone companies would tend to fall as a result of competitive pressures and that the total amount of subsidies necessary would decline.”<sup>11</sup> The proposal is based directly upon this expectation. Moreover, the phase-out triggers are conceptually similar to the impairment test that the Commission adopted to determine eligibility for unbundled network elements,<sup>12</sup> which the U.S. Court of Appeals for the District of Columbia Circuit upheld on appeal.<sup>13</sup> Moreover, the phase out proposal would not violate the prohibition imposed by Congress upon implementing the

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<sup>11</sup> House Report No. 104-204 at 68 (I) (1995).

<sup>12</sup> *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Order on Remand, 20 FCC Rcd 2533, paras. 195-199 (2005) *aff'd* *Covad Commc'ns Co. v. FCC*, 450 F.3d 528 (D.C. Cir. 2006); *See also, e.g. Federal State board on Universal Service*, 18 FCC Rcd 22559 (2003); *Federal-State Joint Board on Universal Service*, 14 FCC Rcd 20432 (1999), *remanded*, *Qwest Corp. v. FCC*, 258 F.3d 1191 (10<sup>th</sup> Cir. 2001). *See also Access Charge Reform, Sixth Report and Order* in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-240, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962, 12974-77 (2000), *aff'd in part, rev'd in part, and remanded in part sub nom., Texas Office of Public Util. Counsel v. FCC*, 265 F. 3d 313 (5<sup>th</sup> Cir. 2001), *cert. denied sub nom., Nat'l Assn' of State Util. Consumer Advocates v. FCC*, 535 U.S. 986 (2002) (After examining the interstate access charge and universal service regulatory regimes for price cap carriers, adopted the “CALLS plan” designed to phase out implicit subsidies and to move toward a market-based approach to rate setting of access charges).

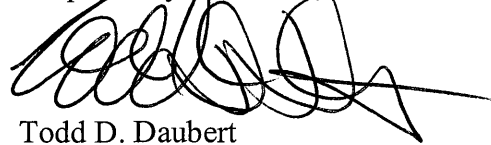
<sup>13</sup> *Id.*

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February 27, 2004, recommendations of the Joint Board.<sup>14</sup> Specifically, the proposal does not violate the Congressional ban because it permits each ETC to receive support for up to two lines for each billing address. Finally, the proposal would be competitively neutral<sup>15</sup> and “neither unfairly advantage nor disadvantage one provider over another and neither unfairly favor nor disfavor one technology over another.”<sup>16</sup> Accordingly, the proposal stands in stark contrast to the other proposals that seek to limit (a) the quantity of eligible ETCs, (b) the number of eligible ETCs that actually receive support, or (c) the amount of total support available to eligible ETCs, each of which would be fundamentally inconsistent with the universal service provisions of the Act.

For these reasons, SouthernLINC Wireless respectfully urges the Commission to adopt its phase-out proposal and act quickly to resolve the pending ETC designation petitions. As required by Section 1.1206(b), this *ex parte* notification is being filed electronically for inclusion in the public record of the above-referenced proceeding, and a copy is being submitted to the attendees of the meetings. Please contact me at (202) 342-8602, if you have any questions regarding this filing.

Respectfully submitted,



Todd D. Daubert  
Counsel for SouthernLINC Wireless

<sup>14</sup> See P.L. 109-289, as amended by P.L. 110-5 (2007) and P.L. 110-92 (2007)(expiring on Nov. 16, 2007). See also S. Rept. 110-129, proposing an extension of the prohibition through fiscal 2008). Among the Joint Board’s recommendations to the Commission was one that proposed limiting the scope of high-cost support to a single connection per household that provides access to the public telephone network. *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket No. 96-45, 19 FCC Rcd. 4257, para. 3 (2004). Congress noted that the Joint Board’s proposed primary line restriction would be “harmful to small businesses, especially in rural areas, which need a second line for a fax or for other business purposes.” See S.Rept. 110-129, Sec. 502.

<sup>15</sup> See, e.g., CTIA Comments at 5 (stressing importance of competitive neutrality); Sprint-Nextel Comments at 10-11 (same); Rural Telephone Group Comments at 5 (same); U.S. Cellular Comments at 19, 33 (same); Missouri Public Service Commission Comments at 10-11 (same); Rural Cellular Association and the Alliance of Rural CMRS Carriers Comments at 32-33 (same).

<sup>16</sup> *Federal-State Joint Board on Universal Service*, Report and Order, FCC 97-157, ¶ 47 (rel. May 8, 1997).

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Attachments

cc: Chairman Kevin J. Martin, Dan Gonzalez, Chief of Staff, Dana R. Shaffer, Bureau Chief, Wireline Competition Bureau, Amy Bender, Legal Advisor, Wireline Competition Bureau (via e-mail)